



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ADC 4862-15

AGENCY DKT. NO. SADC ID#1561

ALFRED POLING,

Petitioner,

v.

OCEAN COUNTY AGRICULTURE

DEVELOPMENT BOARD,

Respondent.

Alfred Poling, petitioner, pro se

Matthew B. Thompson, Esq., for respondent (Berry, Sahradnik, Kotzas & Benson, attorneys)

Record Closed: September 8, 2016

Decided: October 7, 2016

BEFORE **JEFF S. MASIN**, ALJ t/a:

On August 12, 2014, Alfred Poling, the owner and operator of a 19.7 acre farm located at 382 Main Street in West Creek, Eagleswood Township, wrote a letter to the Ocean County Planning Department, expressing concern that Eagleswood Township had fined him for, as he explained, not having a permit to build a fence that he had constructed on his property and for constructing too high a fence. He described certain operations that he conducted on his farm and their benefits. He mentioned that he was aware of his “agricultural rights and the right to farm act” and expressed the belief that he was being “harassed by the township.” That same day he filed a form for the Ocean

County Agricultural Development Board (OCADB), and provided some receipts for the purchase of livestock and a deed, showing that he had purchased the property on August 22, 2012, from Kearny Savings Bank. On December 10, 2014, the OCADB issued a Resolution, in which it determined, among other things, that the property in question was not zoned for agriculture; the property did not receive differential property tax assessment pursuant to The Farmland Assessment Act of 1964, N.J.S.A. 54:4-23.1 to 23.23, from July 2, 1998 to the date of the Resolution; that there was no evidence that a commercial farm was in operation after the passing of a prior owner in 2002; and that Mr. Poling had failed to establish that a “commercial farm” existed on the property after July 2, 1998, and prior to his purchase on August 12, 2012. Further, the OCADB determined that it lacked jurisdiction to issue a Site Specific Agricultural Management Practice (“SSAMP”) because Mr. Poling had failed to satisfy either the “locational” or the “operational” requirements mandated by the Right to Farm Act, N.J.S.A. 4:1C-1 et al.

Mr. Poling then requested that the State Agricultural Development Committee (“SADC”) review the matter, requesting a hearing to demonstrate that the OCADB had “improperly and erroneously divested itself of jurisdiction to hear and decide the facts concerning prior zoning and ongoing farming use at the subject property.” The SADC decided to transmit the contested case to the Office of Administrative Law, where it was filed on April 9, 2015. Thereafter, on June 1, 2015, the OCADB filed a motion for summary decision, as permitted by N.J.A.C. 1:1-12.5. On September 15, 2015, David C. Frank, Esq., the attorney of record for Mr. Poling, filed a letter with Hon. Elia A. Pelios, the assigned administrative law judge, noting therein a motion seeking to be relieved, asserting he had been unsuccessful in several attempts to reach Mr. Poling and that he would not be filing any opposition to the OCADB’s motion. Mr. Frank’s letter was copied to Mr. Poling. On April 4, 2016, Judge Pelios issued an Order, relieving Mr. Frank, noting therein that Frank had provided additional proofs of his attempts to contact Mr. Poling. That Order was sent to Mr. Poling, and it contained the following information addressed to Mr. Poling, “Petitioner is hereby reminded that the respondent, Ocean County Agriculture Development Board, has filed a motion for summary decision, which has been held in abeyance pending resolution of his letter motion. If no response papers are received from the petitioner within twenty days of this Order, the motion will be treated as uncontested.”

On September 8, 2016, the contested case was transferred to this judge, serving on recall, for disposition of the motion for summary decision. As of this date, Mr. Poling has not filed any response to the motion, despite Judge Pelios' cautionary words. As such, the motion is deemed uncontested.

The OCADB determined that Mr. Poling could not receive a SSAMP. Its determination is entitled to a presumption of validity due to its special expertise in regard to agricultural matters. In any matter in which one seeks to obtain a permit or other government approval, the burden to establish the right to such rests upon the party seeking the approval. That burden must be met by a preponderance of the credible evidence. A motion for summary decision is a procedure authorized by regulation, N.J.A.C. 1:1-12.5 and case law, Brill v. The Guardian Life Insurance Company of America, et al., 142 N.J. 520 (1995), for the prompt disposition of litigation where certain standards are met which demonstrate that the material facts relevant to the legal dispute are not in genuine contention and the moving party is legally entitled to judgment based upon those facts. The test requires that the party opposing the motion be given the benefit of any reasonable inferences arising from the evidence and that if, based upon the uncontested facts, a reasonable finder of fact could decide the matter against the moving party, the motion must be denied.

The OCADB decided that it did not have jurisdiction because Mr. Poling failed to establish eligibility requirements under the Right to Farm Act, N.J.S.A. 4:1C-1 et seq. Where a commercial farmer seeks to avoid the effect of municipal ordinances so as to carry on an agricultural activity that the ordinance might otherwise prohibit or limit, the farmer may seek a determination from the County Agricultural Development Board that the activity is a generally accepted agricultural operation or practice and, if all applicable criteria are met, then a determination can be made that the activity constitutes a "site-specific agricultural management practice." But one seeking a SSAMP must first show that he meets at least one of two conditions set forth at N.J.S.A. 4:1C-9. The property on which the activity occurs must be

1. located in an area in which, as of December 31, 1997, or thereafter, agriculture is a permitted use under municipal zoning ordinances and is consistent with the municipal master plan or
2. The commercial farm was in operation as of the effective date of the amended Right to Farm Act, July 2, 1998.

The requirement to comply with at least one of these criteria is jurisdictional. If neither criteria is met, the CADB has no authority to issue an SSAMP. N.J.S.A. 4:1C-9; N.J.A.C. 2:76-2.3; In re Arno, SADC 4748-03, Final Decision, (February 26, 2004). Here, the evidence offered by the moving party shows that Mr. Poling failed to establish either of the requisites to jurisdiction, being unable to document that his farm was in an area zoned for agriculture as of December 31, 1997, or that it was operated as a commercial farm as of July 2, 1998. The altogether deficient effort to show the latter by certain letters does not suffice to make much of a case that the farm was so operated, and the zoning criteria clearly was not met. And in regard to the motion, Poling has never responded to assert any reason why the OCADB is incorrect in its arguments that he failed to meet the jurisdictional threshold.

Based upon the evidence and arguments offered by the moving party, and in the absence of response and given the evident failure of Mr. Poling to show any basis for concluding that he can meet the jurisdictional requirements, I **CONCLUDE** that the motion for summary decision shall be **GRANTED** and the appeal of the decision of the OCADB is **HEREBY DISMISSED**.

I hereby **FILE** my initial decision with the **STATE AGRICULTURE DEVELOPMENT COMMITTEE** for consideration.

This recommended decision may be adopted, modified or rejected by the **STATE AGRICULTURE DEVELOPMENT COMMITTEE**, which by law is authorized to make a final decision in this matter. If the State Agriculture Development Committee does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **EXECUTIVE DIRECTOR OF THE STATE AGRICULTURE DEVELOPMENT COMMITTEE, Health/Agriculture Building, PO Box 330, Trenton, New Jersey 08625-0330**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



October 7, 2016

DATE

JEFF S. MASIN, ALJ t/a

Date Received at Agency:

October 7, 2016

Date Mailed to Parties:

mph

EXHIBITS:

On behalf of Respondent/Moving Party

- R-1 Appendix Volume One, with items as listed therein
- R-2 Appendix Volume Two, with items as listed therein